

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2011-007714-001 DT

03/07/2016

HON. PAMELA GATES

CLERK OF THE COURT
S. Yoder
Deputy

STATE OF ARIZONA

DIANE M MELOCHE

v.

DAVID LOUIS COLSON (001)

DAVID LOUIS COLSON
#280679 ASPC EYMAN
PO BOX 3300
FLORENCE AZ 85132
LEGAL ADVOCATE'S OFFICE
KERRI L CHAMBERLIN
SHERRI LYNN COLSON

COURT ADMIN-CRIMINAL-PCR

PETITION FOR POST-CONVICTION RELIEF DENIED

The Court has reviewed and considered the Defendant's Petition for Post- Conviction Relief, the State's Response and Defendant's Reply.

On October 11, 2012, the grand jury charged Defendant with four counts of sexual conduct with a minor, one count of sexual exploitation of a minor, and one count of furnishing obscene or harmful items to a minor. On February 7, 2013, Defendant entered pleas of guilty to Count 1 as amended, Sexual Conduct with a Minor, a class 2 felony and dangerous crime against children and Counts 2 and 3 as amended Attempted Molestation of a Child, both of which were class felonies and dangerous crimes against children. The Court imposed a prison term of 27 years for Count 1 and suspended the imposition of sentence as to Counts 2 and 3, placing Defendant on lifetime probation upon his physical release from custody.

Defendant claims that: 1) the indictment was multiplicitous and therefore, violated Defendant's rights to be free from double jeopardy and double punishment; 2) the prison

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sentence imposed as to Count 1 was illegal; 3) the Court has no jurisdiction to find Defendant guilty of or impose a sentence in connection with Counts 2 or 3; and 4) trial counsel's failure to raise the claims listed above rendered her assistance ineffective.

The Court finds no support for Defendant's argument that the charges in Counts 1, 2, and 3 were multiplicitous. Each count in the indictment alleged a separate offense. Count 1 addressed an incident when the child victim was approximately ten years old and Defendant pleaded with her to have sex until the victim eventually engaged in sexual intercourse with the Defendant. The Defendant ultimately pled guilty to Count 1, as amended, masturbatory contact rather than sexual intercourse. For Counts 2 and 3, the conduct at issue involved the Defendant engaging in sexual intercourse with the child, then nine or ten years of age. The act of intercourse was interrupted when the victim's mother called. After the call, the Defendant sought to resume sexual intercourse with the child, and the victim informed him that she did not want to have sexual intercourse. Following a fight between victim and Defendant, Defendant again had sexual intercourse with the child. For Counts 2 and 3 under the plea agreement, Defendant pled guilty to Attempted Molestation. Counts 1, 2, and 3 were not multiplicitous.

The Defendant also asserts that the sentence of 27 years was unlawful. Defendant's claim lacks merit. The sentence was authorized by law. *See* A.R.S. § 13-705(C).

Next, Defendant asserts that the Court lacks jurisdiction with respect to Counts 2 and 3 due to the alleged error in the indictment. As set forth above, Counts 1, 2, and 3 were not multiplicitous. The Defendant has no basis to claim that the Court lacks jurisdiction.

Finally, Defendant asserts that the trial counsel rendered ineffective assistance. To prove a claim of ineffective assistance of counsel, Defendant must show:

- (1) that counsel's performance fell below an objective standard of reasonableness as defined by prevailing professional norms (the deficient performance prong); and
- (2) that but for counsel's error(s), there is a reasonable probability that the outcome of the case would have been different (the actual prejudice prong).

Strickland v. Washington, 466 U.S. 668, 687 (1984); *State v. Rosario*, 195 Ariz. 264, 987 P.2d 226 (App. 1999). Defendant has failed to show either deficient performance or prejudice.

The Court finds, the Defendant's Pro Per Petition for Post-Conviction Relief raises no colorable claims that justify further proceedings.

IT IS ORDERED denying Defendant's Pro Per Petition for Post-Conviction Relief.